(9)

No. 95-891

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1995

STATE OF OHIO,

Petitioner,

v.

ROBERT D. ROBINETTE,

Respondent.

On Petition For Writ of Certiorari
To The Ohio Supreme Court

BRIEF OF AMICUS CURIAE STATES OF ALABAMA, CALIFORNIA, COLORADO, DELAWARE, FLORIDA, HAWAII, IDAHO, ILLINOIS, KANSAS, LOUISIANA, MAINE, MARYLAND, MICHIGAN, MINNESOTA, MISSISSIPPI, MONTANA, NEBRASKA, NEVADA, NEW HAMPSHIRE, NEW JERSEY, NEW YORK, NORTH CAROLINA, OKLAHOMA, OREGON, RHODE ISLAND, SOUTH DAKOTA, TENNESSEE, TEXAS, VERMONT, WEST VIRGINIA, WISCONSIN, WYOMING, AND THE COMMONWEALTHS OF KENTUCKY, MASSACHUSETTS, PENNSYLVANIA, AND VIRGINIA, IN SUPPORT OF PETITIONERS STATE OF OHIO

BETTY D. MONTGOMERY
Attorney General
JEFFREY S. SUTTON
State Solicitor
Counsel of Record
SIMON B. KARAS
Deputy Chief Counsel
State Office Tower
30 East Broad St., 17th Floor
Columbus, Ohio 43215-3428
(614) 466-8980

COUNSEL FOR AMICI STATES

30p

JEFF SESSIONS
Attorney General
State of Alabama

DANIEL E. LUNGREN
Attorney General
State of California

GALE A. NORTON
Attorney General
State of Colorado

M. JANE BRADY
Attorney General
State of Delaware

ROBERT BUTTERWORTH
Attorney General
State of Florida

MARGERY S. BRONSTER
Attorney General
State of Hawaii

ALAN G. LANCE
Attorney General
State of Idaho

JIM RYAN
Attorney General
State of Illinois

CARLA J. STOVALL
Attorney General
State of Kansas

A. B. CHANDLER III
Attorney General
Commonwealth of
Kentucky

RICHARD P. IEYOUB
Attorney General
State of Louisiana

ANDREW KETTERER
Attorney General
State of Maine

J. JOSEPH CURRAN, JR.
Attorney General
State of Maryland

SCOTT HARSHBARGER
Attorney General
Commonwealth of
Massachusetts

FRANK J. KELLEY
Attorney General
State of Michigan

HUBERT H. HUMPHREY III
Attorney General
State of Minnesota

MIKE MOORE
Attorney General
State of Mississippi

JOSEPH P. MAZUREK
Attorney General
State of Montana

DON STENBERG
Attorney General
State of Nebraska

JEFFREY B. PINE
Attorney General
State of Rhode Island

FRANKIE SUE DEL PAPA
Attorney General
State of Nevada

MARK BENNETT
Attorney General
State of South Dakota

JEFFREY R. HOWARD
Attorney General
State of New Hampshire

CHARLES W. BURSEN
Attorney General
State of Tennessee

DEBORAH T. PORITZ
Attorney General
State of New Jersey

DAN MORALES
Attorney General
State of Texas

DENNIS C. VACCO
Attorney General
State of New York

JEFFREY L. AMESTOY
Attorney General
State of Vermont

MICHAEL F. EASLEY
Attorney General
State of North Carolina

JAMES S. GILMORE, III
Attorney General
Commonwealth of Virginia

W. A. DREW EDMONDSON
Attorney General
State of Oklahoma

DARRELL V. MCGRAW, JR.
Attorney General
State of West Virginia

THEODORE KULONGOSKI
Attorney General
State of Oregon

JAMES E. DOYLE
Attorney General
State of Wisconsin

THOMAS W. CORBETT, JR.
Attorney General
Commonwealth of
Pennsylvania

WILLIAM U. HILL
Attorney General
State of Wyoming

QUESTION PRESENTED - AMICUS FORMULATION

AFTER CONCLUDING A TRAFFIC STOP, ARE POLICE OFFICERS REQUIRED UNDER THE FOURTH AND FOURTEENTH AMENDMENTS TO GIVE A PROPHYLACTIC, *MIRANDA*-LIKE WARNING (E.G., "AT THIS TIME YOU ARE LEGALLY FREE TO GO") BEFORE ASKING ANY ADDITIONAL QUESTIONS OF THE DRIVER OR BEFORE SEEKING THE DRIVER'S CONSENT TO SEARCH THE VEHICLE?

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STATEMENT OF AMICUS INTEREST

In the decision below, the Ohio Supreme Court created a new doctrine of federal constitutional law, one that contradicts several precedents from this Court and one that will place additional obstacles in the path of legitimate law enforcement efforts. The court held that after a traffic stop has ended, the police officer must warn the driver "At this time you are legally free to go" (or words to that effect) before asking the driver additional questions or requesting consent to search the vehicle. *State v. Robinette*, 73 Ohio St.3d 650, 655 (1995). Thus, under the decision, even though a driver admits that he understood he was "free to leave" when the consensual encounter began (as happened here), even though he then voluntarily consents to a search (as happened here) and even though the police later find contraband in the car (as happened here), the evidence must be suppressed and the defendant allowed to go free.

Until now, that simply was not the law. As this Court has repeatedly held, "a person has been 'seized' within the meaning of the Fourth Amendment, *only if*, in view of all of the facts and circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *United States v. Mendenhall*, 446 U.S. 544, 555 (1980) (emphasis added). *See also Florida v. Bostick*, 501 U.S. 429 (1991). In disregarding this well-established doctrine, the Ohio Supreme Court has not just made new law but has also endangered legitimate law enforcement techniques. Consensual encounters between police and citizens arise in a wide variety of contexts -- not just in traffic stops, but also at airports, on buses, in immigration factory sweeps, as well as on the streets -- and represent an important crime-prevention weapon in the arsenal of law enforcement officers. Accordingly, the Amici States are broadly concerned about the impact of this decision -- and its

new analytical framework -- on this and other areas of law enforcement.

Consensual encounters also arise frequently in the context of drug interdiction efforts. For this reason, as Justice Powell once observed, it is particularly important that courts not unnecessarily curb time-honored approaches to this difficult area of law enforcement:

> The public has a compelling interest in detecting those who would traffic in deadly drugs for personal profit. Few problems affecting the health and welfare of our population, particularly our young, cause greater concern than the escalating use of controlled substances. Much of the drug traffic is highly organized and conducted by sophisticated criminal syndicates. The profits are enormous. And many drugs, including heroin, may be easily concealed. As a result, the obstacles to detection of illegal conduct may be unmatched in any other area of law enforcement.

United States v. Mendenhall, 446 U.S. 544, 561-62 (Powell J., joined by Burger C.J. and Blackmun J., concurring in part and concurring in the judgment).

In the end, by requiring police officers to advise lawfully-stopped individuals "At this time you are legally free to go" before engaging in a consensual encounter, the Ohio Supreme Court has illegitimately impaired police reliance on consensual encounters as a proper tool of law enforcement and in the process hampered efforts to curb illegal drug trafficking and use. For these reasons and those

elaborated below, the Amici States join together in asking this Court to reverse.

ADDITIONAL STATEMENT OF THE FACTS

The trial court determined that Robinette knew that the traffic stop had been concluded and that he was free to leave at the time he gave consent to search his car. Appendix to the Petition, pp. 24-25. This determination was supported by several pieces of evidence, but most credibly by a videotape of the encounter and by the admissions of Robinette himself.

In pertinent part, the conversation captured by the videotape went as follows:

Interstate 70
Dayton, Ohio

August 3, 1992
8:30:22 p.m.

Dispatch: (Inaudible)

Officer Newsome: What do you for a living?

Mr. Robinette: I work for International Paper.

Officer Newsome: Okay.

Since you live in Montgomery County, and you're almost at the end of your trip, I'm going to cut you some slack. Okay?

Mr. Robinette: I didn't see the sign was dropped down.

Officer Newsome: If you have been watching the news you know we've been having a lot of problems with accidents up here, one right after another. We just want to get everyone to slow down. We have been writing a lot of tickets, though.

Mr. Robinette: Yea, (Inaudible)

Officer Newsome: One question before you get gone: are you carrying any illegal contraband in your car? Any weapons of any kind, drugs, anything like that?

Mr. Robinette: Shaking head no.

Officer Newsome: Nothing like that? Okay.

Mr. Robinette: Shaking head no.

Officer Newsome: Is all the luggage in there both yours and his? All of it? Okay.

Mr. Robinette: Shaking head yes.

Officer Newsome: Would you mind if I search your car? Make sure there's nothing in there?

Mr. Robinette: No, go ahead.

Officer Newsome: Wouldn't have any problem with it?

Mr. Robinette: No.

Officer Newsome: Why don't you step up here on the passenger side, right up here. Come on over here. Come out, please. Okay.

If you would both of you stand about ten feet in front of your car there and face the other way.

Dispatch: (Inaudible.)

Officer Newsome: Little bit further, if you would.

Dispatch: (Inaudible.)

Officer Newsome: Move up a little bit further, if you would.

That's fine. Right here. Thanks.

(Searching.)

On cross-examination at the motion to suppress hearing, Robinette also testified as follows:

Q. I believe you testified that Deputy Newsome returned your driver's license to you. And at that point you felt that you were free to leave; is that correct?

A. Yes.

Q. And you indicated that then he asked you whether or not you had contraband in that vehicle; is that correct?

A. Yes.

Q. And you -- and you obviously knew that you could answer that either yes or no; isn't that true?

A. Yes.

See Appendix *(State v. Robinette*, No. 92-CR-2800, Court of Common Pleas, Montgomery County, Ohio, February 26, 1993, Tr. page 27). The trial court further found that Robinette voluntarily consented to the search of his car. *See* Appendix to the Petition, pp. 24-25. In spite of this evidence and these findings, the Ohio Supreme Court determined that no reasonable person would feel free to leave after a traffic stop had ended and that no reasonable person could voluntarily consent to a search in that context.

SUMMARY OF ARGUMENT

The question whether an encounter between a police officer and a citizen is "consensual" (and therefore beyond the scope of the Fourth Amendment) or a "seizure" (and therefore protected by the Fourth Amendment) is not a new one. This Court has long held that the test is one of context, focused on the facts and circumstances of each encounter. Thus, "a person has been 'seized' within the meaning of the Fourth Amendment, *only if*, in view of all of the facts and circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *United States v. Mendenhall*, 446 U.S. 544, 555 (1980) (emphasis added). *See also Florida v. Bostick*, 501 U.S. 429 (1991); *California v. Hodari D.*, 499 U.S. 621 (1991); *Michigan v. Chesternut*, 486 U.S. 567 (1988); *Florida v. Rodriquez*, 469

U.S. 1 (1984); *INS v. Delgado*, 466 U.S. 210 (1984); *Florida v. Royer*, 460 U.S. 491 (1983) (plurality opinion).

The Ohio Supreme Court failed to follow this test in at least two important respects. First, it erected a *per se* barrier to permitting an initial seizure to become a consensual encounter. By requiring the officer first to alert the driver "At this time you are legally free to go," the court created an inflexible test that focuses on just one "fact" in the incident -- the presence of a warning -- disregarding the Court's time-honored approach to this issue which accounts for "all of the facts and circumstances surrounding the incident." *See United States v. Mendenhall*, 446 U.S. at 555. That simply is inconsistent with this Court's Fourth Amendment precedents, particularly those cases that have specifically rejected similar efforts to create a *per se* test for determining whether a seizure has occurred. *See e.g., Florida v. Bostick*, 501 U.S. 429 (1991); *Michigan v. Chesternut*, 486 U.S. 567 (1988).

Second, and no less importantly, the court concluded that "a reasonable person would not feel free to walk away" in the absence of such a warning because it is "unknown to most citizens that the officer lacks legal license to continue to detain them." 73 Ohio St.3d at 655. But just as this Court has properly rejected efforts to impose *per se* tests for determining whether a consensual encounter has occurred, so too has it made clear that individuals do not need *Miranda*-like warnings before having the capacity to consent to the search of a vehicle under the Fourth Amendment. *See, e.g., Schneckloth v. Bustamonte*, 412 U.S. 218 (1973); *INS v. Delgado*, 466 U.S. 210 (1984). This, too, constitutes reversible error.

Nor is there any basis in reason, precedent or the text of the Fourth Amendment itself why the "facts and

circumstances" test is inadequate for situations like this one -- where the seizure devolves into a consensual encounter. By its very nature a "facts and circumstances" test is designed to handle a whole range of law enforcement settings. It thus is no less equipped to ascertain whether a consensual encounter has matured into a seizure, *see, e.g., Florida v. Royer*, *supra*, than it is to determine whether an initial seizure has become a consensual encounter. The test for one is appropriately the test for the other.

Besides being inaccurate, the lower court's new prophylactic rule also will exact a high cost. Above all, it will jeopardize a critical tool of state law enforcement. Consensual encounters have long been an important method of investigation, and curbing police officers' ability to use this approach will unnecessarily hamstring efforts to ferret out illegal drug trafficking and use. This case is a perfect example. At the time consent was given, the officer had told Robinette he would not be charged for speeding, the officer had returned Robinette's license to him, and Robinette himself admitted that he felt free to leave. Nonetheless, the Ohio Supreme Court concluded that no reasonable person would feel free to leave under these circumstances unless they had first heard the magic coda: "At this time you are legally free to go." Such a one-size-fits-all interpretation of the Fourth Amendment disregards precedent and unnecessarily hinders proper law enforcement efforts. The Court should reverse and reaffirm its prior decisions in the face of a decision that wholly ignores them.

ARGUMENT

I. CONSENSUAL ENCOUNTERS DO NOT VIOLATE -- INDEED DO NOT EVEN IMPLICATE -- THE FOURTH AMENDMENT.

The interpretation of the Fourth and Fourteenth Amendments to the United States Constitution, adopted by the court below, is premised on policy determinations about what type of law enforcement techniques are proper and about what type of law enforcement techniques are necessary. However prudent these views may be, they simply are not consistent with this Court's precedents concerning consensual encounters.

"The Fourth Amendment proscribes unreasonable searches and seizures; it does not proscribe voluntary cooperation." *Florida v. Bostick*, 501 U.S. 429, 439 (1991). For this important reason, an encounter between the police and a citizen "will not trigger Fourth Amendment scrutiny unless it loses its consensual nature." *Id.* at 434. *See also Florida v. Rodriquez*, 469 U.S. 1, 5-6 (1984) ("consensual encounter[s] . . . implicat[e] no Fourth Amendment interest"); *INS v. Delgado*, 466 U.S. at 215 ("What is apparent from *Royer* and *Brown* is that police questioning, by itself, is unlikely to result in a Fourth Amendment violation"); *Florida v. Royer,* 460 U.S. 491, 497 (1983) ("law enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to listen, or by offering in evidence in a criminal prosecution his voluntary answers to such questions"); *Terry v. Ohio*, 392 U.S. 1, 19, n.16 (1968) ("Obviously, not all personal intercourse between policemen and citizens involves 'seizures' of persons. Only when the officer, by means of

physical force or show of authority, has in some way restrained the liberty of a citizen may we conclude that a 'seizure' has occurred.").

An encounter with police becomes a "seizure" and implicates the Fourth Amendment "*only if*, in view of all of the facts and circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *United States v. Mendenhall*, 446 U.S. 544, 555 (1980) (Opinion of Stewart, J.) (emphasis added). So long as "a reasonable person would feel free to decline the officers' requests or otherwise terminate the encounter," Fourth Amendment scrutiny simply is not required or even implicated. *Bostick*, 501 U.S. at 435-37. *See also Royer*, 460 U.S. at 501-02. The standard, moreover, has been followed without hesitation in a wide variety of settings. *See, e.g., Bostick* (bus passengers); *Chesternut*, 486 U.S. 567 (1988) (investigatory pursuit); *INS v. Delgado*, 466 U.S. 210 (1984) (factory sweeps); *California v. Hodari D*, 499 U.S. 621 (1991) (police chase).

In this instance, there can be little doubt that the prosecution met this test. Relying on the fact that the officer had informed Robinette that he would not be charged, the fact that the officer had returned Robinette's license to him and the fact that Robinette himself felt free to leave, the trial court properly found that a reasonable person would have felt free to leave at the time consent to search was given. *See* Appendix to the Petition, pp. 24-25. Under established and long-followed case law, this conclusion ends the matter: There was no "seizure" when consent was given, and no Fourth Amendment justification for further scrutinizing the encounter.

II. THE COURT HAS SPECIFICALLY REJECTED *PER SE* TESTS FOR ASSESSING THE PROPRIETY OF A POLICE ENCOUNTER.

The first mistake that the Ohio Supreme Court made in failing to reach this conclusion was to establish a new *per se* barrier for assessing whether a police encounter rises to the level of a "seizure." "We also use this case," the court stated unambiguously,

> to establish a bright-line test, requiring police officers to inform motorists that their legal detention has concluded before the police officer may engage in any consensual interrogation.

Robinette, 73 Ohio St.3d at 652. Whatever the merits of a *per se* test may be as a matter of policy, this Court has specifically rejected such tests in determining whether a "seizure" has occurred under the Fourth Amendment.

In *Michigan v. Chesternut*, 486 U.S. 567, 572 (1988), for example, the Court rejected just such an attempt in the context of investigatory pursuits:

> Both petitioner and respondent, it seems to us, in their attempts to fashion a bright-line rule applicable to all investigatory pursuits, have failed to heed this Court's clear direction that any assessment as to whether police conduct amounts to a seizure implicating the Fourth Amendment must take into account "'all of the circumstances surrounding the incident'" in each individual case. *INS v. Delgado*, 466 U.S. 210, 215 (1984), quoting *United States*

> *v. Mendenhall*, 446 U.S. 544, 554 (1980) (Opinion of Stewart, J.). Rather than adopting either rule proposed by the parties and determining that an investigatory pursuit is or is not necessarily a seizure under the Fourth Amendment, we adhere to our traditional contextual approach and determine only that, in this particular case, the police conduct did not amount to a seizure.

Similarly, in *Florida v. Bostick*, 501 U.S. 429 (1991), the Court refused to hold that all requests by police officers for consent to search the luggage of bus passengers are improper. In doing so, the Court reversed a decision of the Florida Supreme Court that, like this one here, attempted to erect a *per se* rule in this area. The Court remanded the case to state court for a decision on the factual question that this Court has long used to distinguish "consensual encounters" from "seizures" -- whether a reasonable person would "free to leave" at the time of the encounter. *Id.* at 437.

Finally, in an analogous setting, the Court has held that individuals subjected to a traffic stop are not necessarily in custody for Fifth Amendment purposes. *Berkemer v. McCarty*, 468 U.S. 420 (1984). In reaching this conclusion, the Court rejected efforts by the prosecution and defense to erect a *per se* rule, noting the unacceptable consequences of either extreme:

> Admittedly, our adherence to the doctrine just recounted will mean that the police and lower courts will continue occasionally to have difficulty deciding exactly when a suspect has been taken into custody. Either a rule that *Miranda* applies to all traffic stops or a rule that a suspect need not be advised of his rights

> until he is formally placed under arrest would provide a clearer, more easily administered line. However, each of these two alternatives has drawbacks that make it unacceptable. The first would substantially impede the enforcement of the Nation's traffic laws -- by compelling the police either to take the time to warn all detained motorists of their constitutional rights or to forgo use of self-incriminating statements made by those motorists -- while doing little to protect citizens' Fifth Amendment rights. The second would enable the police to circumvent the constraints on custodial interrogations established by *Miranda*.

Berkemer v. McCarty, 468 U.S. at 441.

The lower court's *per se* rule not only disregards this Court's precedents but also does so at the expense of a traditional and much-needed law enforcement technique. By contrast, the contextual "facts and circumstances" test diminishes the risk that permissible encounters between police and citizen will be too quickly condemned as unconstitutional, in the end prohibiting the use of probative, necessary and legitimate evidence. This case is a perfect example. Even though respondent took the stand and admitted under oath that he felt "free to leave" when the officer asked for consent to search his car, the fruits of that search were suppressed. As Justice Stewart once noted, "characterizing every street encounter between a citizen and the police as a 'seizure,' while not enhancing any interest secured by the Fourth Amendment, would impose wholly unrealistic restrictions upon a wide variety of legitimate law enforcement practices." *Mendenhall*, 446 U.S. at 555. The

lower court's decision confirms this pitfall; it should be reversed.

III. THIS COURT HAS SPECIFICALLY REJECTED THE NEED FOR PROPHYLACTIC WARNINGS BEFORE THE POLICE MAY ENGAGE IN A CONSENSUAL ENCOUNTER.

The second mistake that the Ohio Supreme Court made was in requiring police to give prophylactic warnings before a lawful stop may devolve into a consensual encounter. *See* 73 Ohio St.3d at 655 ("That the officer lacks legal license to continue to detain them is unknown to most citizens and a reasonable person would not feel free to walk away as the officer continues to address them."). Just as this Court has rejected *per se* barriers to the conclusion that a consensual encounter has occurred, it also has held that individuals do not need *Miranda*-like advice before having the capacity to consent to the search of a vehicle.

Twenty-three years ago, in *Schneckloth v. Bustamonte*, 412 U.S. 218 (1973), the Court held that knowledge of the right to refuse consent is not the "*sine qua non*" of a voluntariness inquiry under the Fourth Amendment. *Id.* at 234. It thus specifically rejected the "relinquishment of a known right" standard that the Ohio Supreme Court adopted below. *Id.* at 231-34. Later cases confirm the vitality of this standard. *Delgado* held: "While most citizens will respond to a police request, the fact that people do so, and do so without being told they are free not to respond, hardly eliminates the consensual nature of the response." 466 U.S. at 217. And *Mendenhall* held: "Our conclusion that no seizure occurred is not affected by the fact that the respondent was not expressly told by the agents that she was free to decline to cooperate with their inquiry, for

the voluntariness of her responses does not depend on her having been so informed." 446 U.S. at 555. *See also United States v. Kim*, 27 F.3d 947 (3rd Cir. 1994) ("courts have clearly rejected the 'attempt to *Mirandize* [F]ourth [A]mendment consents'") (citation omitted).

Against this backdrop, the Ohio Supreme Court's contrary conclusion amounts to reversible error. Under the Fourth Amendment, individuals simply do not need to be fully apprised of their legal rights before having the capacity to consent to the search of their car.

IV. THE TRADITIONAL "FACTS AND CIRCUMSTANCES" TEST PROPERLY ACCOUNTS FOR CONSENSUAL ENCOUNTERS THAT MATURE INTO SEIZURES AS WELL AS SEIZURES THAT DEVOLVE INTO CONSENSUAL ENCOUNTERS.

Nor is there any tenable reason why a "facts and circumstances" test is inappropriate for situations like this one -- where a seizure devolves into a consensual encounter -- as opposed to the situation where a consensual encounter matures into a seizure. The whole point of a contextual approach is that it is sufficiently flexible to account for all situations, not just one, not even just some.

As the Court has long recognized, this test has the benefit of accounting for a wide variety of factual situations and of permitting courts to treat those situations differently. On the one hand, there may well be cases where an officer's failure to advise people that they are free to leave the scene may be significant in determining whether a consensual encounter has occurred. But, at the same time, there may be situations where that simply is not the case. The standard

followed by this Court, unlike the one-size-fits-all approach used below, accounts for both situations and permits courts properly to treat different fact patterns differently. The test thus accounts for a wide range of settings including any alleged differences between consensual encounters that become seizures and seizures that become consensual encounters. Nor have the lower courts had any trouble applying this standard in the context of cases like this one -- where the consensual encounter followed a seizure. *See, e.g., United States v. Werking*, 915 F.2d 1404 (10th Cir. 1990); *United States v. Dunson*, 940 F.2d 989 (6th Cir. 1991); *United States v. Tragash*, 691 F. Supp. 1066 (S.D. Ohio, 1988); *State v. C.S.*, 632 So.2d 675 (Fla. App. 1994). The lower court's contrary conclusion should be reversed.

V. THE DECISION BELOW, IF ADOPTED BY THIS COURT, WILL SUBSTANTIALLY IMPEDE DRUG INTERDICTION EFFORTS IN THE STATES.

The Amici States fear that the decision of the court below will have severe consequences for local drug interdiction efforts. Use of consensual encounters in drug interdiction has occurred in numerous contexts -- road-side stops, buses, airports -- and has long been an effective law enforcement tool. *See Domestic Drug Interdiction Operations: Finding the Balance*, 82 J. Crim. L. 1109 (1992). In 1994 and 1995 alone, for example, Ohio police officers initiated 408 criminal narcotics prosecutions based on evidence discovered through consents to search. Between 1992 and 1995, in 20 cases in which consents were obtained in "car" cases, Ohio Highway Patrol officers confiscated drugs and currency worth $5,347,988. *See Appendix (*Report of S. Lt. W.D. Healy, December 11, 1995). Similarly, in Texas, 779 traffic stops in 1995 netted 35,803 pounds of

marijuana, 120,771 grams of cocaine, and over 3 million dollars in currency, with a substantial number of such searches based on the driver's consent. *See* Affidavit of John C. West, Jr., Texas Department of Public Safety. Left as is, the unyielding formula adopted by the court below will unnecessarily interfere with, if not dramatically impede, successful law enforcement efforts like these in the future.

CONCLUSION

Amici States respectfully request the Court to reverse the decision below.

Respectfully submitted,

BETTY D. MONTGOMERY
Attorney General

JEFFREY S. SUTTON
State Solicitor
Counsel of Record

SIMON B. KARAS
Deputy Chief Counsel
State Office Tower
30 East Broad St., 17th Floor
Columbus, Ohio 43215-3428
(614) 466-8980

COUNSEL FOR AMICI STATES

IN THE COMMON PLEAS COURT OF
MONTGOMERY COUNTY, OHIO

STATE OF OHIO,	:	
	:	CASE NO. 92-CR-2800
Plaintiff,	:	
	:	
v.	:	
	:	
ROBERT D. ROBINETTE,	:	
	:	
Defendant.	:	

BY MS. SORRELL:

Q. I believe you testified that Deputy Newsome returned your driver's license to you. And at that point you felt that you were free to leave; is that correct?
A Yes.
Q And you indicated that then he asked you whether or not you had contraband in the vehicle; is that correct?
A Yes.
Q And you -- and you obviously knew that you could answer that either yes or no; isn't that true?
A Yes.
Q And although you could have automatically said yes, that being the truth, you, in fact, said automatically no; isn't that correct?

Mr. Ruppert: Objection.
The Court: Well -
Mr. Ruppert: that again goes to the merits of the issue. There are actually three answers; yes, no, and I don't know. Actually, four; I don't have to answer that.
The Court: Except that apparently this has to do with something that may be contained on the stipulated exhibit.

INTER-OFFICE COMMUNICATION

Date December 11, 1995 File No. 3CAS

Level General
To Major R.N. Rucker Attention _____

From S.Lt. W.D. Healy, TDIT Unit Coordinator

Subject-Consent to Search Cases involving Divisional Officers

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On December 6, 1995, Carol O'Brien from the Ohio Attorney General's Office contacted me reference their need to have some statistical information from the Division concerning consent to search cases. The Ohio Attorney General's Office is filing an amicus brief with the United State Supreme court in support of an appeal filed by the Montgomery County Prosecutor (Mathias Heck) on the recently decided Ohio Supreme Court case entitled *State v. Robinette*. The Robinette case dealt with the Ohio Supreme Court's decision requiring law enforcement officers to inform a violator that they are "legally free to leave" prior to requesting a consent to search. The Ohio Attorney General's office would like the Ohio Supreme Court's decision to be reviewed and reversed by the United States Supreme Court; should they decide to grant certiorari and agree to hear the case.

Attached is a synopsis of twenty (20) significant drug or currency seizure cases over

the past 3 years involving TDIT personnel utilizing consent to search authority.

In addition, officers from throughout the state have initiated 408 criminal narcotics cases over the past two (2) years (1994 and 1995) in which consent to search was utilized to locate the narcotics. This information was obtained from the divisional Case Management Systems (CMS) maintained by the Office of Investigative Services.

This information was faxed to the Ohio Attorney General's Office for their use in assisting in the development of the amicus brief for the United States Supreme Court.

TRAFFIC AND DRUG INTERDICTION TEAMS (TDIT)

CONSENT TO SEARCH CASE INVESTIGATIONS

COCAINE SEIZURES:

DATE INCIDENT	AMOUNT	DESCRIPTION OF
8-21-94	19 pounds	Numerous drug courier indicators observed; consent to search was granted which revealed several screw heads around heater core to be extremely clean while the rest were dirty; housing around the heater core removed which revealed 19 pounds of cocaine.
10-18-92	5 pounds	Consent to search requested which revealed 5 pounds of cocaine under the rear seat.

MARIJUANA SEIZURES

DATE INCIDENT	AMOUNT	DESCRIPTION OF
1-27-93	622 pounds	Ryder rental truck; consent to search granted which revealed 622 pounds of marijuana in 16 U-haul

		cardboard boxes mixed in with used furniture.
4-24-95	267 pounds	Consent to search was granted which revealed 267 pounds of marijuana in a modified false compartment underneath the floor of the vehicle; compartment was made out of steel and ran the entire length of the Chevrolet Suburban passenger area.
6-19-93	158 pounds	Consent to search granted which revealed 158 pounds of marijuana in 4 large garbage bags in the trunk.
2-28-95	143 pounds	Consent to search granted which revealed the front door windows would not roll down; door panels were removed which revealed marijuana; a total of 143 pounds was found in various natural cavities of the vehicle.
7-31-94	110 pounds	Consent to search granted which revealed 110 pounds of marijuana inside luggage secured to the top of the vehicle and tied down with ropes and covered with a tarp.

1-10-94	101 pounds	Consent to search granted which revealed 101 pounds of marijuana in the trunk.
12-1-93	50 pounds	Consent to search was granted which revealed two (2) electronically controlled compartments in the rear seat arm rest panels which revealed 50 pounds of marijuana.
6-19-93	44 pounds	Consent to search was granted which revealed a hidden compartment in the vehicle's gas tank containing 44 pounds of marijuana.
6-8-93	40 pounds	Consent to search was granted which revealed 40 pounds of marijuana in 2 large suitcases and 1 duffel bag in the trunk.
3-16-94	33 pounds	Consent to search was granted which revealed 33 pounds of marijuana found in the natural cavities of the vehicle's quarter panel area.
3-30-95	10 pounds	Consent to search was granted which revealed 10 pounds of marijuana under the rear seat.

CURRENCY SEIZURES

DATE INCIDENT	AMOUNT	DESCRIPTION OF
4-13-94	$439,844.00	Consent to search granted which revealed a false door under the passenger compartment of the vehicle; a trap door was located under the rear seat and the compartment had $439,844.00 cash inside.
2-24-94	$67,400.00	Consent to search granted which revealed $67,400.00 cash in 13 separate envelopes and a loaded 9MM handgun in the passenger compartment.
7-7-95	$37,000.00	Consent to search granted which revealed 3 electronic compartments in the back seat area; 2 of the compartments were empty; the other compartment was found in the right rear seat arm rest panel area and contained $37,000 cash.
2-3-93	$35,500.00	Consent to search granted which revealed $35,500.00 cash in the right rear door panel.

7-31-92	$30,600.00	Consent to search granted which revealed $30,600.00 cash in a shoe box on the back seat.
7-29-94	$30,399.00	Consent to search granted which revealed $30,399.00 cash in the back end of a Ryder rental truck mixed in with furniture and clothing.
3-10-93	$29,980.00	Consent to search granted which revealed $29,980.00 cash under the rear seat.

The following is a review on the total value of the seizures involving consent searches:

COCAINE OF $1,090,900.00	24 POUNDS	STREET VALUE
MARIJUANA OF $3,586,365.00	1,578 POUNDS	STREET VALUE
CURRENCY OF $6780,723.00		VALUE

TOTAL VALUE = $5,347,988.00

AFFIDAVIT

STATE OF TEXAS

COUNTY OF TRAVIS

Before me, the undersigned authority in and for the State of Texas, on this the 28th day of March, 1996, personally appeared John C. West, Jr., who after being by me duly sworn, deposes and says:

My full name is John C. West, Jr. I am employed by the Texas Department of Public Safety and have been so employed since 1981. I am currently the Chief of Legal Services for the Texas Department of Public Safety, and have held that position since 1989.

In my capacity as Chief of Legal Services I am aware that in recent years a substantial number of seizures of controlled substances and contraband have been made by troopers of the Texas Department of Public Safety. Many of those seizures occurred during stops of traffic violators.

During 1995, the troopers in the Traffic Law Enforcement Division of the Texas Department of Public Safety made 779 seizures of controlled substances in which the amount seized was more than an amount that would be normally possessed by a mere user of controlled substances. These 779 seizures were all made following a stop of vehicle for a traffic violation. The controlled substances seized as a result of these stops amounted to 35,803 pounds of marijuana and 120,771 grams of cocaine, in addition to other substances. Also, over $3 million in currency believed to be associated with criminal activity was seized in 1995 arising from traffic violator stops.

A substantial number of the seizures of controlled substances or contraband resulted from voluntary consents to search obtained from a driver who had been stopped for a traffic violation.

I have read the above statement consisting of two pages. It is true and correct to the best of my knowledge.

_____

John C. West, Jr.

Subscribed and sworn to before me, the undersigned authority, on this the 28th day of March, 1996.

_____

Notary Public - State of Texas

Allen W. Smiley
Notary Public State of Texas
My Commission Expires
NOVEMBER 25, 1999.